NO. 80-1365

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF CONNECTICUT,
Petitioner

v.

MOHEGAN TRIBE,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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I. The statutory language and intent of Congress is clear; the land transfer section of the Trade and Intercourse Acts applies to tribal land throughout the United States, in Connecticut and Maine, as well as elsewhere. 1

II. Petitioner's erroneous assertions about alleged prevailing case law and alleged executive branch interpretations have all been answered by the decisions of both lower Courts herein. 2

III. No reason even approaching in character those required under Rule 17 is given by Petitioner in its application. 3

IV. The Supreme Court ought not give its approval to land transfers made in violation of Federal law. 3

Had the Petitioner complied with the law, land titles would be certain; it is because of violations of the law that Petitioner's title is now questioned.

Conclusion 4

QUESTIONS PRESENTED

1. Did the Court of Appeals err in holding that the land transfer sections of the Trade and Intercourse Acts applied to lands such as tribal lands in Connecticut and Maine, which lands did not lie in "Indian Country"?

2. Did the Court of Appeals err in holding that the "surrounded by settlements of citizens of the United States" exception was applicable only to certain sections of the Acts dealing with "trade" and "intercourse", and is not applicable to the land transaction section of the Acts.

OPINIONS BELOW

JURISDICTION

STATUTORY PROVISIONS INVOLVED

Respondent does not question Petitioner's statements concerning the lower Court opinions, jurisdiction of this Court nor concerning the statutory provisions involved.

STATEMENT OF THE CASE

Petitioner's statement of the case is substantially correct, with the following notations:

1. As of July 22, 1790 and thereafter the Mohegan Tribe was residing on tribal lands reserved to themselves from time immemorial and/or sequestered for their use (this may be of no significance to issues raised by the instant petition).

2. The Court of Appeals decided that the "surrounded by settlements" exception applied to "trade and intercourse", and not to land transfers.

ARGUMENT

I.

THE STATUTORY LANGUAGE AND INTENT OF CONGRESS IS CLEAR: THE LAND TRANSFER SECTION OF THE TRADE AND INTERCOURSE ACTS APPLIES TO TRIBAL LAND THROUGHOUT THE UNITED STATES, IN CONNECTICUT AND MAINE, AS WELL AS ELSEWHERE.

Petitioner seeks to review the Second Circuit's unanimous holding (Appendix, pp. 26a and 29a) that the land transaction section of the series of Trade and Intercourse Acts

(currently 25 U.S.C. § 177) applies to eastern Indian lands and to Indian lands throughout the United States and that its applicability is not limited to Indian country.

Despite Petitioner's lengthy efforts to show an alleged intention of Congress (which intention neither the District Court nor any member of the 3-Judge Circuit Court found) that the land transaction section of the Acts does not apply in eastern United States, the simple answer, in addition to the clear wording of the section itself, is that *Congress itself has now clearly spoken as to this intention*, by way of Public Law 96-420, signed into law on October 10, 1980, and known as the "Maine Indians Claims Settlement Act of 1980", which appropriates $81,500,000.00 for extinguishing the land claims of certain Maine Indians based on violations of the same Acts as are relied upon in this instant action. If these Acts didn't apply east of Indian country, Congress surely would not have appropriated $81,500,000.00 for such purpose, because the legislative history of P. L. 96-420 shows that violation of the land transfer section of the Trade and Intercourse Acts was the sole basis for the claims which were settled by the legislation.

II.

PETITIONER'S ERRONEOUS ASSERTIONS ABOUT ALLEGED PREVAILING CASE LAW AND EXECUTIVE BRANCH INTERPRETATIONS HAVE ALL BEEN ANSWERED BY THE DISTRICT COURT AND COURT OF APPEALS DECISIONS.

The opinions of the District Court and of the Second Circuit Court of Appeals, printed in Petitioner's Appendix (pp. 3a-29a; 30a-52a), amply rebut Petitioner's erroneous contentions.

III.

NO SPECIAL OR IMPORTANT REASON IS ADVANCED BY PETITIONER FOR THE GRANTING OF ITS PETITION. CLEARLY, NO RULE 17 REASONS APPEAR IN SUPPORT OF ITS PETITION.

Petitioner cannot point with truth at any reason even approaching in character those set forth in Rule 17 for the granting of its application. The language of the statutes is clear and Congress has very recently spoken (*Public Law 96-420, supra*), clearly indicating that its intent was and is consistent with the holding of the Court of Appeals.

IV.

PETITIONER SHOULD NOT BE ALLOWED TO SEEK THE SANCTIONING BY THIS COURT OF LAND TRANSFERS MADE IN VIOLATION OF FEDERAL LAW.

In contending that civil actions such as this one would disturb old land transactions and therefore should not be allowed, Petitioner asks this Court to approve violations of Federal law which is and has been in existence since 1790 in that:

(a) The land transactions which Petitioner seeks to protect were illegal and made in violation of the land transaction section of the Trade and Intercourse Acts (now 25 U.S.C. § 177) because not made with Federal consent or approval;

(b) The land transfer section of the Trade and Intercourse Acts, had it been complied with (land transfers from Indians legal only if with consent of the United States), would have given certainty to land titles; it is the *violation* of the Acts which has given rise to this action; and

(c) An unbroken line of this Court's decisions construing legislation for the protection of Indians in very liberal fashion, as an expression of clear federal policy, ought not to be deviated from now. *Wilson* v. *Omaha Indian Tribe,* 99 S. Ct. 2529, 2537 (1979); *Bryan* v. *Itasca County,* 426 U.S. 373, 329 (1976); *Alaska Pacific Fisheries* v. *United States,* 248 U.S. 78, 79 (1918).

CONCLUSION

For the reasons stated above, Respondent urges that the Petition for Writ of Certiorari be denied.

Respectfully Submitted,

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